FARM CREDIT ADMINISTRATION
Washington, D. C.

SUMMARY OF CASES

RELATING TO

FARMERS' COOPERATIVE ASSOCIATIONS

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COOPERATIVE RESEARCH AND SERVICE DIVISION

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FUNDS RECEIVED FOR COMMODITIES HANDLED ON AGENCY BASIS NOT SUBJECT TO GARNISHMENT

The Military Ridge Cheese Company acted as agent in the marketing of the cheese of its patrons. "The company did not buy the milk of the patrons. It did not in fact manufacture the same into cheese. That was done by the cheesemaker with whom an independent and separate agreement was entered into by the patrons of the company. The only thing that the cheese company did with the property of the patrons, or the property manufactured therefrom, was to sell it upon a stipulated commission. It at no time derived any title to the milk delivered at the factory by the patrons or to the cheese manufactured therefrom."

Money received by the cooperative from the sale of cheese was deposited in the name of the cooperative in a bank. A creditor of the cooperative then instituted garnishment proceedings against the bank. The association answered that the funds in question were not subject to garnishment as they belonged, in the main at least, to the patrons of the association. In holding that the funds to which patrons of the association were entitled were not subject to the garnishment, the court said:

> "In Emigh v. Earling, 134 Wis. 565, 115 N.W. 128, 27 L.R.A. (N.S.) 243, it was held by this court that the legal title to the milk, to the product thereof, and to the proceeds arising from the sale thereof, under a similar contract, was at all times in the patrons of the company, and that the moneys arising from a sale of the cheese were held by the company in a fiduciary capacity for the beneficial use of the patrons of the company, and the trust character of the fund was not changed by the fact that it was deposited in the bank to the personal account of the company. If any authority were required, where the underlying principles involved are so clear, that case is decisive of the question here presented and fully establishes the trust character of the funds which are sought to be reached by the instant garnishment proceedings.
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> "So far as the moneys on deposit in the garnishee bank belong to the patrons, or to the cheesemaker, they are immune from this proceeding. They do not belong to the company and cannot be subjected to the payment of its debts. In view of the fact that the contract set forth in the answer of the garnishee provides that the company may retain the sum of 5 cents for each hundred-weight of milk delivered, as compensation for its duties as selling agent, it may upon an accounting appear that a certain portion of this fund belongs to the company.

Any portion of the fund belonging to the company may be reached by this proceeding and subjected to the payment of defendant's debt. However, as the record is barren of any evidence to indicate what portion, if any, of the fund belongs to the company, there must be a new trial."

Lambert v. Military Ridge Cheese Co. 179 Wis. 359, 191 N.W. 555.

For a holding of the Supreme Court of the United States which is similar in import, see: Union Stock Yards National Bank v. Gillespie, 137 U. S. 411, 34 L. Ed. 724, 11 S. Ct.; also see: 23 C. J. 352.

RESERVES NOT DEDUCTIBLE IN COMPUTING INCOME TAXES

Following an adverse decision by the Board of Tax Appeals, the Co-operative Oil Association, Inc. sought a review thereof by the Circuit Court of Appeals for the Ninth Circuit. The question involved was the right of the association, a nonexempt association to deduct, as a liability to its members, "amounts earned but not distributed to such members." The court held against the association, thus ruling that amounts retained by the association as reserves could not be deducted in determining the amount of the income taxes due by the association. In disposing of the case the court said, in part:

"Membership in the petitioner is limited to those engaged in the production of agriculture products and is conditioned upon the purchase of one share of common stock and the execution of a membership agreement. Petitioner's authorized capital stock is 5,000 shares of $1 par common stock and 3,000 shares of redeemable non-voting, non-participating 6% $5 par preferred stock. The articles of incorporation contain the following provision: 'The net income of this corporation, except such amounts as by law are required to be set aside for reserve funds, or which may be set aside as reserve funds, by the Board of Directors or by vote of stockholders shall be distributed to the stockholding patrons of this corporation who have signed the corporation's purchasing agreement on the basis of their patronage and as shall be provided by the Board of Directors.'

"By virtue of that provision, it can be seen that the interest of a member in the earnings of petitioner is determined on the basis of "patronage" or amount of purchases.

"Section 1, Article IX, of the by-laws is as follows: 'Before distribution of patronage dividends herein provided for it shall be the duty of the board of directors, and they shall

have the right to retain and accumulate out of the net earnings of the corporation such amounts as, in the judgment of said board of directors are necessary and proper to create a reserve or reserve funds necessary to provide working capital and the proper facilities for carrying on the business of the corporation.'

"Section 1, Article X, of such by-laws provides: 'The net income of this corporation except such amounts as by law are required to be set aside as reserve funds, or which may be set aside as reserve funds, or which may be set aside as reserve funds, by the board of directors, or by the vote of the stockholders shall be distributed to the stockholding patrons of this corporation who have signed the corporation's purchasing agreement on the basis of their patronage and as shall be provided by the board of directors. Such patronage dividends shall be ascertained and distributed by order of the board of directors at least once during each fiscal year of the corporation, and may be so ascertained and paid by order of said board twice each fiscal year, at the discretion of the board.'

"The membership agreement provided in part: '* * * before distribution of patronage dividends, it is the duty of the board of directors, and they shall retain and accumulate out of the net earnings of the corporation, such amounts as in their judgment are necessary and proper to create a reserve or reserve funds necessary to provide working capital, depreciation and other reserves and the proper facilities for carrying on the business of the corporation.'

"On May 1, 1934, petitioner sent to its members a circular letter which contained the following statement:

> 'To All Members:
>
> 'The attached draft or credit is only a part of your savings for the six months period ending January 31st, 1934. Your board of directors considers it desirable to retain a portion of the net profits of this period for working capital. As rapidly as our reserves accumulate these earnings will be released and disbursed to you as Patronage Refunds. In the meantime the money is being devoted to the excellent purpose of building your company and making possible larger dividends for the future.'

"Petitioner's earnings or 'savings' for the period January 1, 1934 to November 1, 1934, amounted to $14,737.21. Petitioner claimed the right to deduct in its income tax return covering that period, that entire amount as a liability to members,

although it actually declared and paid as dividends to members only $7,864.55. For the fiscal year ending October 31, 1935, petitioner's earnings were $29,073.83. Petitioner, in its income tax return for that period, claimed the right to deduct the entire amount as a liability to members, although it actually declared and paid dividends to the members in the amount of $17,926.53.

"Respondent disallowed the deductions above referred to. The Board found that the earnings not paid out in dividends were placed in an amount 'Reserve for Working Capital', thus negativing the claim of liability to members. The Board further held that the deduction was not proper, in 'the absence of some definite act of appropriation'. Petitioner seeks review of the decision to that effect.

"Petitioner contends that the Board's finding that the earnings not paid out in dividends were placed in a reserve, is not supported by substantial evidence, and that its articles and by-laws specifically make its earnings belong to its members in any event. Petitioner does not set forth any theory as to what statute authorizes the deduction, even if its contentions are sound. No statute is cited to show that the deduction is authorized, if petitioner's contentions are correct, and we therefore assume that there is no such statute.

"Petitioner does not contend that it is 'exempt' from taxation under the Revenue Act of 1934, Ch. 277, § 101(12), 48 Stat. 680, 26 U.S.C.A. Int.Rev.Code, § 101(12), or under such act as construed by Article 101(12-1) of Treasury Regulations 86, promulgated under that act. Likewise, as stated, petitioner does not contend that the 'deduction' claim is authorized by statute. The situation is fully set forth by the following quotation from respondent's brief, which is unchallenged by petitioner: 'There is no express statutory provision permitting the deduction of so-called patronage dividends by corporations subject to taxation. The administrative practice, however, has been to permit cooperative associations, even though not exempt from taxation, to deduct from gross income the amounts returned to their patrons, whether members or non-members, upon the basis of the purchases or sales, or both, made by or for them. This is upon the theory that a cooperative association is organized for the purpose of furnishing its patrons goods at cost or for obtaining the highest market price for the produce furnished by them.'

"In other words, petitioner points to no statute authorizing any deduction whatever, and we are in effect asked to hold that a practice of respondent permitting a deduction not authorized by statute, is not liberal enough. We know of no

manner in which such liberality may be reviewed in this court. It is familiar law that 'Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed' and 'a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms'. New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440, 54 S. Ct. 788, 790, 78 L.Ed. 1348. See also: White v. United States, 305 U.S. 281, 292, 59 S.Ct. 179, 83 L.Ed. 172.

"Petitioner makes no attempt to show that it is the object of legislative grace by pointing to a statute authorizing the deduction. The Congress has not legislated the deduction, and the courts cannot usurp that function. Whether respondent should have allowed the deduction he did allow is a question upon which we express no opinion."

Co-operative Oil Association v. Commissioner of Internal Revenue, (C.C.A.), 115 F. 2d.666

See Right of Nonexempt Association to Deduct Patronage Dividends in Computing Taxable Income, Summary No. 2, page 16; and Internal Revenue Bulletin (Cumulative) 1938-2, page 127, in which the association issued participation certificates and under the facts involved was allowed to deduct the amounts evidenced by such certificates in computing its income taxes.

OFFICERS AND DIRECTORS LIABLE FOR LOSSES FROM ULTRA VIRES ACTS

"Appellants, as receivers of the Mississippi Farm Bureau Cotton Association, an insolvent corporation, filed their bill against the officers and directors of said corporation in which it was alleged, to state the substance in brief, that the corporation had been incorporated for the purpose of marketing the cotton of the farmers of the state, and for warehousing the cotton of those who had produced the same, so as to obtain the best prices possible; and, in the meantime, to assist the farmers in financing themselves while holding their cotton in the warehouses of the said co-operative corporation. It is further alleged that there were two optional contracts which the farmers who placed their cotton in the hands of the corporation could make, one under which the cotton was not to be sold until directed by the farmer, and the other under which the corporation could sell the cotton when the corporation deemed best; but in either event when sold, the proceeds, less the charges for the services rendered, should be immediately remitted by the corporation to the farmer whose cotton was sold.

"The bill further alleged that during the years 1927, 1928, and 1929, although wholly unauthorized so to do by the charter of the corporation and although such course was entirely ultra vires, the officers and directors of the corporation took from time to time, and almost from day to day, the proceeds of the sales of the cotton sold by said corporation and therewith engaged in dealing in cotton futures, and that as a result of said unauthorized conduct on the part of said officers and directors there was lost from the funds of said corporation the sum total of $207,341.90; the said losses being itemized in the bill in lengthy detail. That by reason of said losses in dealing in cotton futures the said corporation became and is now insolvent, owing debts in excess of $200,000, no part of which it is able to pay; that the greater part of said debts is for cotton which was placed with the corporation by the producers, and which was sold by said corporation, the proceeds of which, instead of being remitted to the said farmer-producers, was wasted by said officers and directors in their ultra vires conduct of diverting said funds into the hazardous and unauthorized business of dealing in cotton futures.

"A general demurrer was interposed and was sustained. The argument made in support thereof is that the bill does not show that the course of conduct pursued by said officers and directors was in violation of law. This argument overshoots the mark. The bill alleges that the said officers and directors were not authorized at all by the charter of the corporation to deal in futures; that such conduct was wholly ultra vires; that said officers and directors had no authority to deal with the proceeds of the cotton sold, otherwise than to remit to the respective owners thereof less the cost of handling the cotton so sold; and that the diverting of this money into the business of dealing in cotton futures was a misappropriation of the funds of the corporation.

"Thus there is to be applied a simple, and as we think an elementary, principle of law: When an agent or fiduciary is intrusted with funds or property to be devoted to or managed for specified purposes, and the agent or fiduciary deviates from his trust and devotes or appropriates the money or property to uses or purposes outside of and beyond those authorized and a loss occurs as a result of such unauthorized uses, the agent or fiduciary must restore the funds or property so lost, and particularly is this true when the funds or property has been diverted into ventures known to be hazardous, as is the case here. And it is only another version of the ancient principle above stated, that when officers and directors engage in any enterprise or venture not authorized by the charter of the corporation, which is ultra vires and results in a loss or waste of the funds of the corporation, the officers and directors who acquiesce in or consent to such a deviation from their trust are liable at the suit of the receivers for the funds so lost."

Wells v. Neill, (Miss.), 138 So. 569.

For other cases similar in import see: McCauley v. Arkansas Rice Growers Co-operative Association, 171 Ark. 1155, 287 S.W. 419; Fergus Falls Woolen Mills Company v. Boyum, 136 Minn. 411, 162 N.W. 516.

RIGHT OF MEMBERS TO INSPECT BOOKS DENIED

An incorporator and a member of the St. Cloud Milk Producers' Association, of St. Cloud, Minnesota, instituted mandamus proceedings against the association for the purpose of compelling the association to permit him to examine its books and records. It appeared that he had contributed something over $54.00 to the organization, which was formed without capital stock. It was contended that a member of a cooperative did not have a right to examine its books and records. In regard to this matter the court said in part:

> "With respect to the proposition that the purposes and characteristics of a co-operative are such as to exclude the idea of an inspection of the books and records by the members and stockholders, it is pointed out that co-operatives are incorporated to make a profit for the members as distinguished from the corporation, and that the respondent association is a nonstock corporation. It is claimed also that inasmuch as co-operatives are required to file reports with the public examiner, the information contained in such reports is a substitute for any inspection. The Cooperative Marketing Act itself seems to negative the general proposition that the purposes and characteristics of a co-operative are such as to exempt them from the right of inspection. The statute provides for cooperatives of two classes, those with and those without capital stock. Mason's Minn. St. 1927, § 6081, and other sections of the Cooperative Marketing Act. It is apparent that the argument is too broad. By providing that there may be co-operatives with stock, the Cooperative Marketing Act clearly made section 7470 applicable to those cooperatives which have capital stock. This conclusion is necessary because of the express terms of section 7470. That statute by its terms applies to all stock corporations and is broad enough to include co-operatives with capital stock. By making the co-operatives with stock subject to the statutory right of inspection, the Legislature clearly indicated that the purposes and characteristics of a co-operative are not such as to exempt all co-operatives from such right of inspection.

"The same reasons obtain for permitting the right of inspection of the books and records of a co-operative as in the case of an ordinary business corporation with capital stock. The basis upon which the right of inspection rests is that the members of a corporation are in fact the real owners of the books and the property of the corporation and those in charge of the corporation are merely the agents of the true owners.

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"It is apparent that the members of a nonstock cooperative stand in substantially the same relation to the corporation as do the members of a cooperative with capital stock or other business corporation with capital stock.

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"It would seem that if stockholders and members of a corporation are entitled to an inspection of its books because of the fact of ownership, that the reason obtains in full force in the case of cooperatives whether they be organized with or without capital stock.

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"The members of a co-operative, whether it be stock or nonstock, are entitled in all proper cases to an inspection of the books, records, and papers of the corporation.

"The right of inspection should not be denied because cooperatives are required to file annual reports with the public examiner by the provisions of Mason's Minn. St. 1927, § 6098. Such reports are not a substitute for inspection of books, records, and papers. The fact that a corporation is required to file reports or is subject to the visitorial powers of government is no reason for denying the right of inspection of corporate books to one who is entitled thereto."

It was urged by the association that the plaintiff in the mandamus proceedings was not entitled to examine its books and records because he had been expelled by action of its board of directors. On this point the court said in part:

"Neither the statute, the articles of incorporation, nor the by-laws of the association authorize the board of directors to exercise the power of expelling members. The statute authorizes the board of directors to adopt by-laws, subject to the approval of the members by a majority vote or by the written assent of such majority, providing for the automatic

suspension of the rights of a member when he ceases to be eligible for membership in the association, and the mode, manner, and effect of the expulsion of a member. Mason's Minn. St. 1927, § 6037 (i). The articles of incorporation are silent upon this matter. The association's by-laws provide that 'a member may be expelled for any action which tends to violate agreements and regulations of the association or to injure the business of the association.' This is the only provision relative to the expulsion of members. It does not provide by whom the power of expulsion shall be exercised. The power of expulsion of members is in the entire membership or all the stockholders of a corporation except in the cases in which it is delegated to the board of directors. Ordinarily, such delegation can be accomplished only by an express provision in the statute under which the corporation is organized, or by the articles of incorporation. In the case of co-operatives, our statute permits the delegation of the power to the board of directors by the adoption of a by-law expressly so providing, which shall state the mode, manner, and effect of the expulsion of a member. But the respondent association has not complied with the statute and therefore it has failed to delegate the power of expulsion to the board of directors."

* * * * * *

"Inasmuch as the association's board of directors did not possess the power of expulsion, the attempt to expel the petitioner was void upon its face and the court below was justified in so finding."

The association successfully maintained that the demand for access to the books and records of the association was not made in good faith. In this connection the following appears in the opinion:

"Respondents claim that petitioner is not seeking the writ in good faith and for proper purposes. The evidence clearly discloses facts which require findings of lack of good faith and improper motives. It appears that there is a combination or conspiracy of three dairy companies in St. Cloud and some of the expelled members of the respondent association to oppose the association and its business. There is keen competition between the dairies and the association. The association has invaded a business field heretofore pre-empted by the dairy companies. In opposing the respondent association, the dairies have attempted to ruin it, and have canceled contracts entered into by them with the association whereby they agreed to handle the products of the members of the association. The breaches of contracts by the three dairies

occurred at the same time and suggest concert of action. The expelled members of the respondent association are dissatisfied and have refused to abide by the action which the association has taken. The dairy companies and their representatives have united with the expelled members of the association for their common purposes. Contracts have been entered into between the dairies and some of the members whom they have induced to terminate their association memberships. By entering into contracts with the members of the association, the dairy companies have interfered with the contractual relations existing between the association and its members, which constitute the basis upon which any co-operative depends for its success."

* * * * * *

"The dairy companies are not shown to have any interest in the petitioner except as they may be able to use him to advance their purposes. There is no reason disclosed why they should solicit funds to finance this lawsuit and themselves contribute the amounts stated; they are not shown to have any interest in this lawsuit except to harass the respondent and, if possible, transfer the control of it to the so-called expelled members and, if possible, destroy the respondent as a competitor. The inference is inescapable that the lawsuit is brought for the benefit of the dairy companies and not for the benefit of the petitioner. Mandamus should therefore be denied."

State v. St. Cloud Milk Producers' Association, 200 Minn. 1, 273 N. W. 603.

STATUTE PROVIDING FOR FILING OF MARKETING CONTRACTS UPHELD

The Watertown Milk Producers' Co-operative Association instituted an action against the Van Camp Packing Company

"to restrain the said defendant from inducing or aiding members of said plaintiff co-operative association from breaching their contracts with said association, and to restrain the said defendant from accepting or receiving milk or the manufactured products thereof from the members of the said plaintiff association, and to recover damages for the defendant's misconduct in inducing and aiding the breach of such contracts, and in receiving and accepting milk or the manufactured products thereof from said members of said plaintiff association. Upon application of the defendant John P. Stark, a member of said plaintiff association, he was made a party defendant."

The Van Camp Packing Company and Stark each filed answers to the complaint and the association demurred to their answers; from an order overruling the demurrers the cooperative association appealed. On appeal the question of whether the complaint stated a cause of action was considered and the argument was made that the statute of Wisconsin which provided that a cooperative association could file in the office of the Register of Deeds a copy of its uniform contract with its members, together with a sworn list of the names of all makers of such contracts residing in any such county, was invalid. The statute further provided that such filing should constitute notice

> "to any and all persons that an interest in the property so agreed to be sold by the maker of such contract during the term of such contract is vested in the said association, and that in case of a purchase thereafter of any such property by any party other than the association from any party other than the association, no title of any kind or nature shall pass to such other purchaser,"

The statute also made any person "so dealing with a member liable for a return of the property to the association and subject to an injunction." The Van Camp Packing Company contended that this statute interfered with its right to contract and do business. In answer to this argument the court said in part:

> "Without question, the right of contract is a valuable right, but, like any other property right, it is subject to the police power of the state and may be regulated and restrained in the public interest. It is the manifest purpose of our Legislature to promote the organization and success of co-operative marketing associations. This is in obedience to a widespread and rapidly growing public opinion that such associations afford an economic relief necessary to the welfare and perpetuation of the farming industry. That the necessities of that industry present a legitimate basis for classification in relieving such associations from the sweep of anti-trust laws, was held by this court in Northern Wisconsin Co-op. Tobacco Pool v. Bekkedal, 182 Wis. 571, 197 N. W. 936, and such has been the rule of many courts elsewhere. See cases reviewed and cited in Liberty Warehouse Co. v. Burley Tobacco Growers' Co-op. Marketing Ass'n. 48 S. Ct. 291, 72 L. Ed. 473. In the latter case it is said: 'It is stated without contradiction that co-operative marketing statutes substantially like the one under review have been enacted by 42 states. Congress has recognized the utility of co-operative association among farmers in the Clayton Act (38 Stat. 731 (15 USCA § 17)), the Capper-Volstead Act (42 Stat. 388 (17 USCA §§ 291, 292)), and the Co-operative Marketing Act of 1926 (44 Stat. 802 (7 USCA §§ 451-457))."

"The successful establishment of these associations has been attended with many obstacles. Those with whom such associations come in competition have been resourceful and active. They have appealed to the guilelessness and cupidity of the members, with a view of breeding dissatisfaction on their part with the association and inducing them to breach their contracts. A phase of this sort of campaign was dealt with in the Bekkedal Case, 182 Wis. 571, 197 N. W. 936, and it is believed that section 185.08 of the Statutes, which has been built up by successive Legislatures, was enacted to meet situations which experience showed was threatening the success of such associations and to compell all outsiders to keep 'hands off' in the relations existing between the associations and their members. The sum and substance of section 185.08 is to prevent any one from buying the products of a member of such an association during the time when he is under contractual obligation to deliver his product to the association. We might indulge in much discussion to show that such limitation upon the liberty of contract is justifiable in the promotion of the general welfare, but will content outselves with resting upon the decision of the United States Supreme Court in the Liberty Warehouse Co. Case, 48 S. Ct. 291, 72 L. Ed. 473, where a similar provision of a Kentucky statute was upheld against an assault in all respects similar to that here made. We hold the provisions of section 185.08 a valid and constitutional enactment."

An attack was also made upon the uniform contract employed by the cooperative on the ground that this contract was lacking in mutuality and therefore, void. In disposing of this point the court said:

"By the contract the member 'appoints the association as sales agent to sell all the milk or manufactured product thereof produced by him or on farms controlled by him, and to deliver said milk or the manufactured product thereof as the association may from time to time direct.' However, there is no provision in this contract by which the association agrees to do anything for the member. This gives rise to the lack of mutuality which it is contended renders the contract invalid under general and well understood principles of the common law. It might be difficult to sustain the validity of this contract if its validity depended upon those principles. But the Legislature may change the principles of the common law, and in so far as these contracts are concerned it seems to have done so by the provisions of section 185.08 (2), which provides: 'Contracts between any association organized under sections 185.01 to 185.22, inclusive, and its members whereby such members agree to sell all or a specified part of their products to or through, or

to buy all or a specified part of goods from or through the association or any facilities created by the association, shall, if otherwise lawful, be valid.' The legislative purpose here seems to be to make the agreement of the member of the association a binding and enforceable agreement, irrespective of any agreement on the part of the association to the member. This provision of the statute withdraws from our consideration the question of whether this contract is void for lack of mutuality."

It was also contended that the marketing contract was void for uncertainty because the provision in the contract providing for liquidated damages did not conform to the requirements of the Wisconsin statute regarding this matter. In holding the liquidated damage provision of the contract void, the court said:

"It will be observed that section 185.08 (3) provides that such contracts may determine a specific sum as liquidated damages for breach thereof, or in lieu of a specific sum such an 'amount equal to a certain percentage, not exceeding thirty per cent., of the value of the products which are the subject of the breach.' The contention here is that the contract does not fix an amount equal to a certain percentage of the value of the products which are the subject of the breach. The contract fixes a 'sum of money not exceeding one-fifth of the value of the products which are the subject of the breach.' It does not fix 20 per cent. of the value of the products as stipulated liquidated damages. It simply provides that it shall not be more than 20 per cent. It may be 5, 10 or 15 per cent. Manifestly this is not what the statute means. The statute means that the contract may fix any percentage, which shall not be more than 30 per cent. of the value of the products subject to the breach. This percentage, whatever may be agreed upon, must be stipulated in the contract. If 25 per cent. is agreed upon, that must be stipulated. We consider this particular provision of the contract void, but that does not invalidate the entire contract. It was no inducement to the agreement of the member. It was for the benefit of the association, and in the nature of a penalty on the member in case he breached the contract. If the penalty cannot be enforced, the member cannot invoke that circumstance to invalidate the entire contract."

The defendants further contended that the form of uniform marketing contract which had been filed with the Register of Deeds was not the form of contract which the association had used in entering into contracts with the majority of its members. With respect to this matter the court declared that:

"The idea of the law is that the filing with the register of deeds of a copy of the uniform contract, together with a sworn list of those who have entered into the contract, gives such constructive notice. However, in order for such filing to so operate, the provisions of the statute must be substantially complied with. The answer alleges that the copy of the so-called uniform contract filed with the registers of deeds of Dodge and Jefferson counties was not the contract entered into by the great bulk of the members of this association. If this be true, it does not amount to a substantial compliance with the statute. It would amount to notice only with reference to those who had in fact signed the contract, copy of which was filed. If a proportion of the members signed some other contract, not filed, there would be no constructive notice as to them. This is a defense which may properly be made."

The answer of Stark also alleged a breach of the contract on the part of the cooperative, in that the association had demanded:

"that he install expensive appliances on his premises for the proper cooling of the milk, thereby supplanting his existing method, and imposing upon him an expense which made it impossible for him to comply with the contract."

The court declared that:

"If this be true, it may relieve Stark of the obligations of his contract, on the ground that the act of the association prevented performance on his part."

Watertown Milk Producers' Co-operative Association v. Van Camp Packing Company, 199 Wis. 379, 255 N.W. 209, 77 A.L.R. 391.

NO RIGHT TO VOTE BY PROXY AT COMMON LAW

A member of the Farmers Co-operative Creamery Company sought by an injunction to restrain the moving of its principal place of business from Baltic to Dell Rapids, South Dakota. It appeared that the association in the notice for the annual meeting of the association advised that there would be submitted to the meeting "a proposal to amend article III of the articles of incorporation of the company to change the place where the principal place of business of said corporation should be transacted from Baltic, South Dakota, to Dell Rapids, South Dakota." At the annual meeting a quorum of more than 30 common stockholders were present. A vote was taken on amending the articles of incorporation to change the principal place of business and 500 votes, consisting of 36 votes in person and 464 votes by proxy were cast in favor of the

amendment, while 70 votes were cast against it. The president of the association was in doubt as to the exact number of outstanding shares of common stock of the cooperative and, therefore, was not able to determine whether a majority vote of the company's common stockholders had been cast in favor of the resolution and he stated that he would not make a ruling on this matter; thereupon, a motion was made and carried to adjourn the meeting to a later date. At this adjourned meeting a motion was made and carried to rescind the action taken at the previous meeting and 543 votes, including 516 votes cast by proxy, were filed in favor of doing so and 17 votes were cast against it. A motion was then made and seconded to amend the articles of incorporation of the cooperative for the purpose of changing its place of business and this resolution was adopted by a vote of 535 votes, consisting of 516 votes cast by proxy and 19 votes cast in person, while 17 votes were cast against the resolution. The resolution was thereupon by the president declared to have been carried. A bylaw of the corporation read, in part, as follows:

> "'A quorum for the transaction of business at any annual or special meeting of the stockholders shall consist of thirty common stockholders. At every meeting each common stockholder shall be entitled to cast one vote only, which may be cast by proxy, * * *.'"

In answer to the contention that stockholders may not vote by proxy, the court quoted the following with approval:

> "'At common law it was required that all votes at corporate meetings should be given in person; and this is still the rule, with respect both to nonstock and to stock corporations, in the absence of express provision to the contrary. A stockholder or member of a corporation cannot give a proxy or power of attorney to another to represent him and vote at a corporate meeting, unless the right to do so is given by the charter or a general constitutional or statutory provision, or by a valid by-law.' 5 Fletcher Cyclopedia Corporations, § 2050, p. 167."

The court found that there was statutory authority for the bylaw authorizing stockholders to vote by proxy. In this connection the court said:

> "Chapter SDC 11.01 of our general corporation laws makes a sweeping declaration that 'the provisions of this title shall apply to all corporations other than public, unless from the context of any statute a different intention plainly appears.' SDC 11.0101. Following the above provision we find that by statute corporations are divided into public or private, and necessarily the respondent Farmers Co-operative Creamery

Company is a private corporation and that under Section SDC 11.0104, subdivision 6, it has the right to make its own by-laws not inconsistent with the laws of the land.

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"The enactment of by-law Section 16, quoted earlier in the opinion, providing for voting by proxy was a power granted to the corporation by statute, as it seems clear to us that the general laws relating to corporations apply also to co-operatives. Sections 8286 and 8285 (pp. 1203 and 1205), 16 Fletcher Cyclopedia Corporations."

The court further pointed out that independent of statutes there is authority to the effect that a bylaw alone may authorize voting by proxy. On this point the court quoted the following, with approval:

"'It is evident, from an examination of the cases, that the courts which follow the analogy of the common law, hold that by-laws authorizing votes by proxy are invalid. But the better reason, as well as the weight of authority, is in support of the proposition that the corporation may by by-law authorize stockholders to vote by proxy. Indeed, no sufficient reason can be shown why this should not be. Where the stockholders themselves adopt the by-laws for the regulation of the corporation, they should certainly be at liberty, and ought to have the power, to regulate their method of voting.' Thompson on Corporations, vol. 2, § 970, p. 348."

In answer to the objection that the adjourned meeting was not a lawful meeting, the court said, in part:

"It is true that the members of the corporation had convened to do certain acts at the meeting regularly called, yet nowhere does it appear in the record and the court did not find that adjournment was not made in good faith and that fraud had been perpetrated, and it must be conceded that the power to adjourn resides in the stockholders assembled at the meeting. This power was exercised, and a valid adjournment resulted by the stockholder's action to another date, and the second meeting was a continuation of the annual meeting, and the acts and proceedings which could take place on the first day could also take place with like force and effect on the second day of the meeting, to which an adjournment had been taken by the stockholders. 14 C.J. 921, (s 1436) 10.

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"If an annual meeting is adjourned to meet on another day, the adjourned meeting is merely a legal continuation of the annual meeting, and the voters can do any act which might have been done if no adjournment had taken place; therefore, the stockholders of the corporation at the adjourned meeting were still in session with like force and effect and could do all things that they could have done had no adjournment been taken and accordingly were within the stated rule competent to alter or change any resolution on motion adopted by them.

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"The fact that more votes were cast at the adjourned meeting because of new votes obtained since the regular meeting does not seem to alter the situation."

Sagness v. Farmers Co-operative Creamery Company, ____S. Dak.____, 293 N.W. 365.